IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 817 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GHANSHYAMBHAI PANNALAL MAHESHWARI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 817 of 2002

MS SUBHADRA G PATEL for Petitioner No. 1

MR SAMIR DAVE, AGP for Respondents No. 1-3

RULE SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/03/2002

ORAL JUDGEMENT

14-9-2001

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social

Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 14-9-2001 passed by the District Magistrate, Banaskantha at Palanpur, and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. She has submitted that four prohibition cases were registered against the petitioner at Palanpur City and last offence registered against the petitioner is dated 21-7-2001 at Palanpur Police Station. She has further submitted that statements of the witnesses recorded by the authority are not verified by the detaining authority. According to her, statements of two witnesses whose identity was not required to be disclosed was recorded on 7-8-2001 and same was verified by the Police Inspector and not by the detaining authority and no explanation to that effect has been putforward by the authority. Even no affidavit has been filed by the authority. It has been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detentiion is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

4. Since no affidavit has been filed by the authority and also since no satisfactory explanation has been putforth by the said authority justifying their action as well as the grounds mentioned in the detention order, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 14-9-2001 passed against the detenu is hereby quashed and set aside. The detenu Ghanshyambhai Pannalal Maheshwari is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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